

VIRGINIA :

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
John Marshall Courts Building

ALAN SCHINTZIUS, et al.,)	
)	
Plaintiffs-Petitioners,)	
v.)	Civil Action No. CL16-3874
)	
J. KIRK SHOWALTER, et al.,)	
)	
Defendants-Respondents.)	

SPECIAL PLEA OF LACHES

COME NOW, the defendants, J. Kirk Showalter, C. Starlet Stevens, and Cecilia A.B. Dabney (collectively, the “Defendants”), and states as follows as their plea in bar to the Complaint filed herein by the plaintiffs:

1. “A plea is a pleading which alleges a single state of facts or circumstances (usually not disclosed or disclosed only in part of the record) which, if proven, constitutes an absolute defense to the claim.” *Nelms v. Nelms*, 236 Va. 281, 289, 374 S.E.2d 4, 9 (Va. 1988). “The fact put in issue by the plea constitutes in itself a complete defense to the bill, or to that part of the bill to which it is pleaded.” *Bolling v. General Motors Acceptance Corp.*, 204 Va. 4, 8, 129 S.E.2d 54, 56 (Va. 1963). “The advantage of such a plea over an answer is that it shortens the litigation, reducing the issue, as it does, to a single point. When issue is taken on such a plea and judgment is taken on the jury’s favorable verdict thereon, the case is at an end.” *Id.* at 8, 129 S.E.2d at 57 (citations omitted).

2. This action arises out of Alan Schintzius’ submission of materials to qualify as an independent candidate for the November 2016 election for Mayor of the City of Richmond. The plaintiffs seek injunctive relief arising out of the rejection of certain signatures on Schintzius’s



petitions, resulting in his failure to obtain the statutorily mandated number of petition signatures in Richmond's Eighth District. The plaintiffs assert that Schintzius' disqualification violated their First and Fourteenth Amendment rights under the U.S. Constitution, and the counterpart provisions of the Virginia Constitution.

3. Schintzius was first notified of his disqualification as an independent candidate on June 21, 2016. He noted an appeal, and an appeal hearing was conducted before the Electoral Board for the City of Richmond on June 30, 2016.

4. As of today's date, September 7, 2016, we are a few short days away from the printing of paper ballots for the November 2016 election. State and federal law require paper ballots to be mailed on or before September 23, 2016.

5. The plaintiffs are apparently aware of these crucial deadlines. The Plaintiffs' Memorandum in Support of Motion for Temporary Injunction notes that ballots must be mailed on or before September 24, 2016, and predicts that ballots will be printed on approximately September 8, 2016. (P's Memo. under Case No. CL16-3875, at 12.)

6. Despite these dates, the plaintiffs waited fifty-four (54) days to file this lawsuit, delaying the adjudication of these issues to the eve of the printing of ballots, and threatening the ability of government officials to fulfill their legal obligations preparatory to the November 2016 election.

7. The plaintiffs' lack of diligence has seriously prejudiced the Defendants in their performance of official duties. Moreover, were this Court to grant the plaintiffs' the requested injunctive relief, it would place an onerous burden on the Defendants due the proximity of this action to critical milestones leading up to the November 2016 election.

8. For these reasons, which will be more fully articulated at an evidentiary hearing on the instant motion, this action is barred by the doctrine of laches.

WHEREFORE, the defendants, J. Kirk Showalter, C. Starlet Stevens, and Cecilia A.B. Dabney, by counsel, pray that this Court enter an Order (i) sustaining the instant plea in bar; (ii) dismissing this action with prejudice; and (iii) awarding such further relief as this Court deems just and appropriate.

Respectfully submitted,

J. KIRK SHOWALTER
C. STARLET STEVENS
CECILIA A.B. DABNEY

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following counsel of record via hand-delivery this 7th day of September, 2016:

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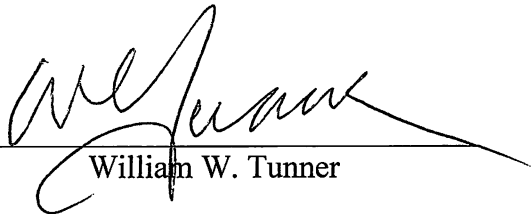
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